IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1737 OF 2005

Abbas H. Mithiborewala ...Petitioner.

V/s

M/s. First Trading House
Ltd. & Anr. ...Respondents.

Mr. A.G. Damle for J.P. Singh for the petitioner.
Mr. Amit Seth, advocate for respondent No.1.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 15th April, 2005

P.C.:

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No.1.

2. Petitioner is challenging the order of issuance of process passed by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai in a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. The learned counsel appearing for the petitioner contended that the petitioner resigned as a Director of the Company on 24/12/2001 and an entry was made in Form 32 on 6/1/2002. He submitted that the cheque in question was issued on 27/12/2001 and it was presented

on 15/1/2002 and returned on 22/1/2002. The learned Counsel for the applicant has relied on Form 32 which indicates that he had resigned on 6/1/2003. The learned counsel also relied on a letter dated 24/12/2001 intimating his resignation to the Managing Director.

4. The learned Counsel appearing on behalf of respondent No.1 has vehemently opposed the said submissions. He submitted that respondent No.1 has seriously disputed the resignation of the petitioner from the Company. He has stated that there is no acknowledgement given by the Company to the letter of resignation dated 24/12/2001 which is dispatched by the petitioner. It is submitted that this letter of resignation is, obviously, an afterthought because the cheque is dated 27/12/2001. He also brought to my notice that there is some overwriting on Form 32 and the date has been altered from 16/1/2002 to 6/1/2002.

5. I have perused the copy of the complaint and copy of Form 32 annexed by the petitioner. It appears that the fact of resignation is seriously disputed by respondent No.1. It does appear that there has been some alteration in the date mentioned in Form 32 which is annexed to the petition. The cheque was deposited

in Bank on 15/1/2002 and it appears that, thereafter, on 16/2/2002 the resignation was tendered in order to show that the resignation was tendered prior to 15/1/2002. It appears that the date has been changed. In any case, it will not be possible to give any positive finding at this stage and both the parties will have to lead evidence in the trial court on these aspects and, thereafter, the trial court will give finding on merits and in accordance with law. The Trial Court will not be influenced by any observations made by this Court while deciding this application as the observations are only made in order to see whether this Court can exercise its inherent jurisdiction under section 482 of the Criminal Procedure Code to quash the complaint. All questions raised in this application are kept open.

6. With the above directions, Criminal Application is dismissed.

V.M. KANADE, J.